Filed 3/8/12 Estate of Bennett CA4/3

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

Estate of JACK HARRY BENNETT, Deceased.	
LU ELLA BENNETT et al., Petitioners and Appellants, v. SMITH HEAVY INDUSTRIAL TRANSIT CORPORATION, Claimant and Appellant.	G043840 (Consol. with G044554 & G044668) (Super. Ct. No. A235178) O P I N I O N

Appeals from orders of the Superior Court of Orange County, Mary Fingal Schulte, Judge. Affirmed.

Law Offices of Michael R. Lawler, Jr., and Michael R. Lawler, Jr., for Petitioners and Appellants Lu Ella Bennett, Jack H. Bennett, Jr., and Louise Comer.

Bright and Brown, Maureen J. Bright, John Quirk, Kristin G. Taylor; Neil W. Knuppel, Inc., and Neil W. Knuppel for Appellant Brea Cañon Oil Co., Inc.

Law Offices of Kent Vallette, Kent Leeds Vallette; Law Office of Duff McEvers and Duff Steven McEvers for Claimant and Appellant.

* * *

This case involves three consolidated appeals arising from a probate action concerning the Estate of Jack Harry Bennett, deceased.

It is the second time this case has come before us. In *Estate of Bennett* (2008) 163 Cal.App.4th 1303, we reversed an order granting the motion of petitioners Lu Ella Bennett, Jack H. Bennett, Jr., and Louise Comer (collectively petitioners) to set aside and rescind a settlement agreement and an assignment of their interests in decedent's estate they entered into with claimant Smith Heavy Industrial Transit Corporation (Smith). We held the probate court erred when it decided the matter without first conducting an evidentiary hearing. (*Id.* at pp. 1308-1310.) However, we also rejected Smith's claim the sole remedy available was a modification of the estate's distribution (*id.* at p. 1311), declaring "if after conducting an evidentiary hearing the probate court concludes any one of petitioners' grounds for invalidating the settlement and assignment has merit, it has the discretion to either modify the parties' agreement or rescind it" (*id.* at p. 1312).

During the pendency of the first appeal, the probate court heard and ruled on other matters. In part, the court found Lu Ella Bennett did not have a community property interest in the real property that was the subject of the settlement agreement and assignment of rights, and it denied petitioners' motion to substitute Brea Cañon Oil Co., Inc. (Brea) as the real party in interest on the set-aside motion.

Upon remand, the probate court conducted an evidentiary hearing on the

motion to set aside the settlement and assignment and also considered whether, in light of other agreements whereby petitioners transferred their interests in the estate to Brea, they had standing to maintain the motion. The court found petitioners had standing, but denied the motion. Petitioners and Brea appeal from this ruling (case No. G043840).

Smith moved for an award of attorney fees against both petitioners and Brea. The probate court granted the motion as to petitioners, awarding Smith over $51,000 in fees. However, it denied the motion as to Brea. Petitioners appeal the fee award imposed on them (case No. G044554) while Smith appeals the portion of the order denying recovery of its fees from Brea (case No. G044668).

We conclude the probate court did not commit prejudicial error in denying the motion to set aside the settlement and assignment and it properly ruled on the requests for attorney fees. Consequently, we shall affirm in all respects.

FACTS AND PROCEDURAL BACKGROUND

Decedent married Lu Ella Bennett in 1953. The children of their marriage included Jack H. Bennett, Jr., and Louise Comer. Decedent and Lu Ella Bennett separated in 1963.

In 1971, decedent acquired title to or an equitable interest in several parcels of real property in Harbor City, California. Brea currently has a leasehold interest in the parcels authorizing it to use them for oil and gas drilling operations.

Although decedent and Lu Ella Bennett briefly reunited in the early 1980's, they again separated in 1983. Decedent petitioned to dissolve the marriage in 1988 and a judgment ending their marital status was entered the next year.

After the divorce, decedent married Delores Caballero. He died in 1992. Petitioners testified they believed decedent did not own any property when he died. No estate proceeding was filed at that time.

Since the late 1960's Lu Ella Bennett has lived in a Newport Beach home. In the late 1980's decedent created a trust, placed title to the property in it, and named Jack H. Bennett, Jr., and Louise Comer as the trustees. Later, the trustees transferred the property's title to Lu Ella Bennett.

In 1984, Robert L. Pike and Richard C. Goodman obtained a $170,000 default judgment against decedent. Pike and Goodman renewed the judgment twice. The first renewal occurred in 1993. In June 2002, Pike and Goodman created an entity named R & B Land Acquisition and Development, Inc. (R & B) and assigned the judgment to it. Through R & B, they renewed the judgment a second time in July 2003. At that time, the amount of the judgment exceeded $663,000.

Smith focuses on acquiring "distress[ed]" properties and reselling them at a profit. Richard Jones is Smith's president and Christian Hickey is vice-president. In late 2001 and early 2002 Smith learned the Harbor City parcels were held in decedent's name and that Pike and Goodman held a judgment against him.

Smith contacted Pike and Goodman and in April 2003 entered into an agreement with R & B. Under it, Smith promised to disclose "all [o]pportunities that it has learned [of] regarding real . . . property subject to the lien and foreclosure of the [d]efault [j]udgment . . . ." The contract provided "[u]pon approval of R & B, the [p]arties . . . may use up to $250,000 of the Bennett [j]udgment in the foreclosure of any . . . [o]pportunities . . .," and that Smith and R & B would equally share "the net proceeds obtained from the foreclosure . . . ."

Goodman testified "some procedure would be used to take advantage of the[] opportunities," but the parties did not "specifically discuss[] what – in . . . detail." Hickey understood the agreement "allow[ed Smith] to utilize [R & B's] judgment," and R & B was "assigning certain interests in the ability to be able to do what we wanted . . . with the judgment." Jones described the agreement as providing

Smith "the right to use . . . the quarter of a million dollars of Pike and Goodman's judgment to . . . pursue opportunities."

In August 2003, Hickey sent Goodman a letter providing a timeline concerning title to the Newport Beach residence. The letter stated Smith had retained attorney Duff McEvers because of his involvement in the Kenton action, a prior lawsuit that sought to foreclose on the Newport Beach residence to collect on another judgment entered against decedent. In the prior litigation, McEvers initially obtained a default judgment, but it was later reversed. Jack H. Bennett, Jr., and Louise Comer filed a third party claim and ultimately obtained a judgment declaring they owned the property and it was not subject to a levy to enforce the Kenton judgment. In his letter to Goodman, Hickey also noted "it is imperative that th[e Pike-Goodman] judgment remains . . . enforceable . . . to insure that we can perfect our lien rights . . . before we proceed and incur the necessary expenses associated with our execution of it."

Goodman acknowledged R & B's agreement with Smith did not constitute an assignment of the judgment and he never otherwise authorized Smith to seek enforcement of it against the Newport Beach residence. However, he admitted knowing about and approving Smith's efforts to foreclose on the Newport Beach property and, if Smith had sought permission to bring the action, he would have granted it.

In December, McEvers filed an action on behalf of Smith against petitioners seeking to set aside a fraudulent transfer. The complaint alleged that "[f]rom and after April 2003, . . . [Smith] was, by assignment, the holder of [the j]udgment . . . against" decedent. Although the complaint's allegations are somewhat confusing and contradictory, the first cause of action essentially pleaded decedent owned the Newport Beach residence and, "[t]hrough [m]esne conveyances" transferred the property to a trust and then to Lu Ella Bennett without consideration and that she received title "with knowledge that [decedent] intended to hinder, delay, or defraud the collection of" the judgment. The complaint's second cause of action alleged petitioners

conspired with decedent to transfer title to the property to Lu Ella Bennett to preclude "collection of its [j]udgment . . . ."

Petitioners contacted Steven Stern, the attorney who represented them in the Kenton action. Stern informed them he believed the Smith action lacked merit and could be successfully defended. He contacted McEvers to discuss how they could "make this [lawsuit] go away." Stern testified that during one telephone conversation, McEvers asked if petitioners knew of any property decedent owned when he passed away. Stern asked McEvers the same question and the latter said he was not aware of any such property. At trial, McEvers admitted he had information leading him to believe "there were properties in . . . California and possibly Texas that may have been part of [decedent's] fraudulent conveyances."

Stern and McEvers negotiated the settlement agreement and assignment of rights that are at the heart of this appeal. After asking petitioners if they knew of any property owned by decedent when he died and being told they were unaware of any assets, Stern advised them to sign the settlement and assignment.

Under the settlement, Smith agreed to "dismiss with prejudice" its action against petitioners and withdraw the lis pendens recorded against the Newport Beach residence in return for petitioners' agreement "to assign any and all rights as heirs and beneficiaries to [decedent's e]state . . . ." Along with the settlement, they also executed an assignment of rights. Smith then dismissed its action and withdrew the lis pendens on the Newport Beach property.

Petitioners testified they relied on Stern to negotiate the settlement and assignment and did not have any contact with Smith or McEvers before executing the documents. Neither Stern nor petitioners conducted any investigation. Petitioners claimed they would not have signed the settlement and assignment had they known Smith did not own the R & B judgment or about decedent's interests in the Harbor City lots, and

Stern testified that had he known these facts he would not have advised them to accept the proposed settlement.

In October 2005, Lu Ella Bennett received a letter from the Los Angeles County Sheriff's Department addressed to decedent concerning a notice of levy on a Harbor City parcel. In late 2005 and early 2006 petitions seeking letters of administration for decedent's estate were filed by Jones, Lu Ella Bennett, and Caballero. The probate court appointed Caballero as administrator.

In May 2006, petitioners and Lori Armstrong, another child of decedent, signed the first of two confidential agreements with Brea. Under this agreement, petitioners and Armstrong agreed to affirm the validity of Brea's oil and gas leases, quitclaim their interests in the Harbor City lots to Brea, and take certain steps in the probate action to perfect their interests in decedent's estate, which included moving to set aside the settlement and assignment with Smith. In return, Brea agreed to pay them $1 million plus certain contingent bonuses. By the time of the evidentiary hearing, petitioners and Armstrong had each received approximately $100,000 from Brea.

Four months later, petitioners filed a motion under Probate Code section 11604 to set aside and rescind the settlement agreement and assignment of rights with Smith. They argued Smith "obtained [the settlement and assignment] without giving adequate consideration," or "by fraud" or "duress," and that the settlement and assignment "should be rescinded because the[y] . . . entered into the[m] . . . with the mistaken belief that [decedent] owned no real property and that [Smith] was the holder of the [d[efault [j]udgment against [decedent]."

The parties submitted competing declarations and, as noted above, based on those declarations the probate court granted the motion. We reversed that ruling and remanded the matter for an evidentiary hearing. (*Estate of Bennett*, *supra*, 163 Cal.App.4th 1303.)

While the appeal was pending, petitioners executed a second agreement with Brea that restated and amended the one made in May 2006. Under the second agreement, they "assign[ed] to [Brea] all of their interests" in certain litigation, including "the [p]robate [c]ases . . . ." In return, Brea agreed to pay petitioners the balance of the $1 million due "upon . . . resolution . . . of the [p]robate [c]ases" and "within a reasonable time substitute itself in as the [p]etitioner in the [p]robate [c]ases . . . ."

After remand of this case, the probate court conducted an evidentiary hearing on petitioners' motion to set aside the settlement and assignment with Smith. It then issued a minute order denying the motion that included "some comments" on the basis of its ruling.

The court rejected the lack of consideration claim, noting "[t]he value of [petitioners'] interest was speculative at the time of the settlement" and "[t]hey received a dismissal of a lawsuit which [it] cannot find was meritless or sham, based on the evidence . . . ." In part, the court found "Jones . . . came across as a credible witness" who "believed the suit had merit" and "that by dismissal of the suit, he was giving up something of value. He [also] felt the . . . agreement with Pike and Goodman was, in a sense, an assignment, which in his mind made paragraph 3 of the complaint accurate."

As for fraud, the court ruled "[t]he evidence does not support a finding of either fraudulent disclosure or fraudulent nondisclosure." It found petitioners relied on Stern, who "testified that he felt the claim was not meritorious," but never asked him to investigate the matter, and he did not recount to them his conversations with McEvers. The court noted "McEvers came across as an honest, credible witness," and that "Stern did not testify that McEvers' knowledge (or lack thereof) was a key to the settlement."

Concerning duress, the court cited to the definition of it contained "in Civil Code section 1569" and ruled "nothing in the evidence remotely support[s] a claim of duress." On the mistake of fact claim, the court noted Probate Code section 11604 did not refer to mistake as a basis for relief and the statute "doesn't authorize rescission."

DISCUSSION

1. Denial of the Set-Aside Motion

a. Background

Probate Code section 11604 declares that, "where distribution is to be made to" a "transferee of a beneficiary" (Prob. Code, § 11604, subd. (a)(1)), the probate court "on motion of" an "interested person . . ., may inquire into the circumstances surrounding the execution of, and the consideration for, the transfer [or] agreement, . . . and the amount of any . . . consideration paid or agreed to be paid by the beneficiary" (Prob. Code, § 11604, subd. (b)). It further provides the "court may refuse to order distribution, or may order distribution on any terms that [it] deems just and equitable, if the court finds either of the following: [¶] (1) The . . . consideration paid or agreed to be paid by a beneficiary [is] grossly unreasonable. [¶] (2) The transfer, agreement, request, or instructions were obtained by duress, fraud, or undue influence." (Prob. Code, § 11604, subd. (c).)

Petitioners argue we may review the probate court's ruling de novo because the evidence presented at the evidentiary hearing was undisputed. Both the law and the probate court's findings dispel this assertion.

Rulings on motions under Probate Code section 11604 are generally reviewed under the substantial evidence standard. (*Estate of Wright* (2001) 90 Cal.App.4th 228, 238.) "'"It is the general rule that on appeal an appellate court will (a) view the evidence in a light most favorable to respondent, (b) not weigh the evidence, (c) indulge all intendments which favor sustaining the finding of the trier of fact, and (d) not disturb the finding of the trier of fact if there is substantial evidence in the record in support thereof. . . . [T]he power of an appellate court *begins* and *ends* with a determination as to whether there is any substantial evidence contradicted or uncontradicted which will support the finding of fact."' [Citation.]" (*Estate of*

Simmons (1963) 217 Cal.App.2d 580, 585.) Here, the probate court's minute order included its findings on witness credibility that reflect it "chose to believe [Smith's witnesses] . . . ." (*Estate of Raphael* (1951) 103 Cal.App.2d 792, 796.) While many of the transactions at issue were undisputed, there were conflicting inferences that could be drawn and "we must . . . draw[]every reasonable inference in . . . favor [of the probate court's findings] which the evidence will support." (*Id.* at p. 795.)

b. Duress

As noted, petitioners moved to set aside the settlement agreement and assignment of rights with Smith on four grounds: inadequate consideration, fraud, duress, and mistake. On appeal, they do not dispute the findings on lack of consideration or fraud. But they contend the probate court applied the wrong legal standard in finding no evidence of duress and by rejecting mistake of fact and the remedy of rescission.

We agree the probate court erred by relying solely on Civil Code section 1569 to reject the duress claim. It defines duress in terms of the "confinement of [a] person" or "detention of . . . property . . . ." (Civ. Code, § 1569, subds. 1, 2.) However, California recognizes economic duress as a basis for relief from a contract. "Under this theory, wrongful acts will support a claim of economic duress when 'a reasonably prudent person subject to such an act may have no reasonable alternative but to succumb when the only other alternative is bankruptcy or financial ruin.' [Citations.]" (*Uniwill L.P. v. City of Los Angeles* (2004) 124 Cal.App.4th 537, 545.)

But "[a] judgment or order of a lower court is presumed to be correct on appeal, and all intendments and presumptions are indulged in favor of its correctness. [Citations.]" (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133.) Furthermore, "error in eliminating a legal theory from a case is not categorically reversible," and "[t]he [appellant] must articulate prejudice specific to the particular case . . . ." (*Paterno v. State of California* (1999) 74 Cal.App.4th 68, 107.) For example, in cases where findings

are required, "[t]he failure to make a finding on a material issue is harmless where the evidence is such that 'had a finding been made on such issue it would have been adverse to the contentions advanced by the appellant.' [Citation.]" (*Bowyer v. Burgess* (1960) 54 Cal.2d 97, 101; see also *Brown v. Shroeder* (1927) 88 Cal.App. 192, 201 ["It is not always necessary to make a specific finding as to each of several material issues where the findings taken as a whole, or construed together, clearly show that they include the court's conclusion upon all the material issues"].)

As for determining whether the record supports a finding of economic duress, generally "courts 'are reluctant to set aside settlements and will apply "economic duress" only in limited circumstances and as a "last resort." [Citation.]' [Citation.]" (*Perez v. Uline, Inc.* (2007) 157 Cal.App.4th 953, 959.) The probate court's comments on the issues of lack of consideration and fraud reflect the economic duress defense would fail as well.

Petitioners argue Smith "affirmatively represented . . . a number of facts and claims [it] . . . knew . . . were patently untrue," including it "was the assignee of the [d]efault [j]udgment," "knew that the [c]omplaint lacked merit, and knew decedent "did not own any property at the time of his death . . . ." In addition, they claim Smith's action "was . . . barred by Probate Code section 9300[which] prohibit[s] the enforcement of a judgment against the decedent's property outside 'the course of administration' . . . ."

The reliance on Probate Code section 9300 lacks merit because we rejected that very claim in the prior appeal. "Smith's action against petitioners sought to set aside the transfer of decedent's interest in the Newport Beach residence, allegedly because it constituted a fraudulent conveyance, not to enforce the judgment in violation of [Probate Code] section 9301." (*Estate of Bennett, supra,* 163 Cal.App.4th at p. 1310.)

The remaining contentions present questions of fact the record reflects were decided adversely to the petitioners by the probate court. The only purportedly false representations petitioners and Brea cite to are the allegations of Smith's complaint. But

the probate court expressly found petitioners relied on Stern's advice in deciding to settle the fraudulent conveyance action and neither they nor Stern investigated the veracity of the complaint's allegations. McEvers did tell Stern he did not know of any properties decedent owned at death. However, the court found "[t]here was no evidence . . . Stern told [petitioners] of his conversation with . . . McEvers, so they could not have relied on anything . . . McEvers said," and "Stern did not testify that McEvers' knowledge (or lack thereof) was a key to the settlement."

On the question of whether Smith's lawsuit had merit, the court noted both McEvers and Jones, witnesses it found to be credible, testified they believed it did. As for the complaint's allegation Smith was the assignee of the Pike and Goodman judgment, Jones testified he "felt it . . . was accurate. . . . I didn't know what else to call it." Goodman admitted he knew about Smith's efforts to foreclose on the Newport Beach residence, had no objection to its effort to do so, and had he been asked, he would have told Smith to proceed with the lawsuit. "'"[W]e have no power to judge of the effect or value of the evidence, to weigh the evidence, to consider the credibility of the witnesses, or to resolve conflicts in the evidence or in the reasonable inferences that may be drawn therefrom."' [Citations.]" (*Reichardt v. Hoffman* (1997) 52 Cal.App.4th 754, 766.)

In addition, to prevail on an economic duress claim the party asserting it "must have had no 'reasonable alternative' to the action it now seeks to avoid (generally, agreeing to a contract). . . . Whether the party asserting economic duress had a reasonable alternative is determined by examining whether a reasonably prudent person would follow the alternative course, or whether a reasonably prudent person might submit. [Citation.] Clearly this inquiry is a factual one . . . ." (*CrossTalk Productions, Inc. v. Jacobson* (1998) 65 Cal.App.4th 631, 644.) Again, the probate court's findings suggest petitioners did have an alternative course of conduct, defending against the Smith lawsuit. It noted Stern told them he did not believe Smith had "a meritorious claim" and there was only "a miniscule likelihood of losing" the case.

Accordingly, the record fails to support a conclusion the probate court would have reached a different result on the duress claim had it applied the economic duress doctrine.

c. Mistake of Fact

The probate court rejected petitioners' mistake of fact defense because mistake of fact is not listed as a ground for relief in Probate Code section 11604 and that statute did not authorize the remedy of rescission. As mentioned in this opinion's introduction, the latter conclusion is erroneous. In *Estate of Bennett, supra*, 163 Cal.App.4th 1303, we expressly held that, after conducting the evidentiary hearing, the probate court could rescind the settlement and assignment if it found one of petitioners' grounds had merit. (*Id.* at p. 1312.) Furthermore, "when a party has been induced by . . . mistake to enter into a contract, the party may have the contract set aside and seek restitution of those benefits lost to him by the transaction. [Citation.]" (*Merced County Mutual Fire Insurance Co. v. State of California* (1991) 233 Cal.App.3d 765, 771.)

Nonetheless, assuming mistake of fact could be asserted in a proceeding under Probate Code section 11604, as with the petitioners' economic duress claim, the probate court's mere failure to decide the issue is not reversible per se. "A mistake of fact may be urged as a defense to . . . a contract only if the mistake is material to the contract. [Citations.]" (*Edwards v. Lang* (1961) 198 Cal.App.2d 5, 12.)

Petitioners and Brea argue the mistake of fact authorizing rescission of the settlement agreement was the complaint's allegation Smith "owned the [d]efault [j]udgment . . . ." But the record fails to reflect Smith's status as assignee of the default judgment was crucial to petitioners' decision to execute the settlement and assignment of rights. The probate court found they relied on Stern in deciding to agree to the settlement. Petitioners testified Stern's focus was on their knowledge concerning

decedent's assets. Comer claimed Stern "asked us repeatedly, 'Are you sure your Dad didn't have anything?'" Lu Ella Bennett asserted Stern "kept asking my daughter and son . . . if [decedent] had any real property." According to Stern, he explained to petitioners the "settlement agreement would entail [Smith]. . . waiving any claim which [it] might have had against the [Newport Beach] residence. Mrs. Bennett . . . could reside there . . . for the rest of her life . . . . There were no more threats of her losing the property . . . . In exchange, [petitioners] would give up any claim against any assets which [decedent] had owned. And again, [petitioners] said, you know, [decedent] didn't own anything, and if we can get out of the litigation quickly with minimal expense, where do we sign?" There was no evidence petitioners questioned the veracity of Smith's judgment assignee status allegation, investigated the basis for it, or asked Stern to do so.

Finally, the evidence suggests there was no impediment to Smith obtaining an assignment of the R & B judgment had petitioners challenged its right to enforce it. Jones testified he believed Smith had the right to use the judgment to seek foreclosure on the Newport Beach property. Goodman admitted knowing about the action and would have given authorization to use the judgment had he been asked to do so.

Thus, we conclude the probate court did not commit reversible error in rejecting petitioners' mistake of fact defense to the enforceability of the settlement and assignment with Smith.

2. The Attorney Fees Order

Paragraph 4.13 of the settlement agreement between petitioners and Smith provides, "In the event any claim, dispute and/or litigation arises out of this [a]greement, the prevailing party shall be entitled to recovery of its attorneys' fees and costs incurred in prosecuting or defending said claim, dispute, or litigation."

After we reversed the initial order granting the motion to set aside the settlement and assignment, Smith filed a motion in the probate court seeking an award of attorney fees for the prior appeal. The court continued the hearing of this request until after it conducted the evidentiary hearing on the set-aside motion. Once the court conducted the hearing and denied the motion, Smith renewed its request for an award of attorney fees against both petitioners and Brea.

The court awarded Smith $51,236.21 in fees against petitioners, but denying its request for an award against Brea. In support of the latter ruling the court found Brea "did not act as the Bennett[s'] . . . 'successor in interest[']in the set[-]aside motion," it "was never assigned any rights under the [Smith-Bennett settlement agreement], and it did not assert any claim under th[at] agreement. It seems [Brea] did direct the litigation, but that is not enough to impose liability upon it for contractual attorney fees."

Petitioners appeal from the fee award imposed on them. However, other than merely claiming that if the order denying the motion to set aside the settlement agreement and assignment of rights is reversed the fee award should also be reversed, they do not otherwise challenge the probate court's ruling. In light of our affirmance of the order on the set-aside motion, we also uphold the fee award against petitioners.

The sole remaining issue is Smith's right to recover attorney fees from Brea. The basis for the fee award is a provision of the settlement agreement. Civil Code section 1717 declares "[i]n any action on a contract, where the contract specifically provides that attorney's fees and costs, which are incurred to enforce that contract, shall be awarded either to one of the parties or to the prevailing party, then the party who is determined to be the party prevailing on the contract, whether he or she is the party specified in the contract or not, shall be entitled to reasonable attorney's fees in addition to other costs." (Civ. Code, § 1717, subd. (a).)

Brea was not a party to the settlement agreement. But Smith claims it

can recover fees from Brea because petitioners assigned their rights in the probate action to Brea and the latter party acted as "the 'puppet master' controlling the litigation of the . . . [m]otion for its own benefit."

Generally, whether a legal basis exists for an attorney fee award presents a question of law that is reviewed de novo. (*Sessions Payroll Management, Inc. v. Noble Construction Co.* (2000) 84 Cal.App.4th 671, 677.) But "[w]hen a trial court has resolved a disputed factual issue, an appellate court reviews the ruling according to the substantial evidence rule. The trial court's resolution of the factual issue must be affirmed if it is supported by substantial evidence. [Citation.]" (*Heppler v. J.M. Peters Co.* (1999) 73 Cal.App.4th 1265, 1290.) We conclude the probate court properly rejected Smith's attorney fee claim against Brea.

The rule applicable in this context is that "'[w]here a nonsignatory plaintiff sues a signatory defendant in an action on a contract and the signatory defendant prevails, the signatory defendant is entitled to attorney fees only if the nonsignatory plaintiff would have been entitled to its fees if the plaintiff had prevailed.' [Citation.]" (*Sessions Payroll Management, Inc. v. Noble Construction Co., supra,* 84 Cal.App.4th at p. 679.) Courts have recognized "[t]wo situations" that "may entitle a nonsignatory party to attorney fees," one being "where the nonsignatory party 'stands in the shoes of a party to the contract[,]'" and a "[s]econd . . . where the nonsignatory party is a third party beneficiary of the contract. [Citation.]" (*Cargill, Inc. v. Souza* (2011) 201 Cal.App.4th 962, 966.)

No claim is made that Brea was a third party beneficiary of the settlement agreement between petitioners and Smith. But Smith urges Brea "litigated the [motion to set aside the settlement and assignment] on its own behalf as the assignee of the Bennetts . . . ." (*Heppler v. J.M. Peters Co., supra,* 73 Cal.App.4th at pp. 1289-1292.)

Petitioners did "assign to [Brea] all of their interests respecting . . . the [p]robate [c]ases," which included the property interests at issue in decedent's estate. But

the court specifically ruled Brea "did not act as the Bennett[s'] successor in interest[']] in the set-aside motion," it "was never assigned any rights under the [settlement agreement], and it did not assert any claim under the agreement." Thus, it rejected Smith's assertion petitioners' assignment of the probate cases to Brea necessarily included the settlement agreement they entered into with Smith. This conclusion is buttressed by the court's additional finding that when Brea "attempted to sue in its own name, . . . [Smith] successfully opposed [that] move." (Underscoring omitted.)

In addition, just before the evidentiary hearing on the motion to set aside the settlement and assignment, Smith sought a determination of whether, in light of the assignment of rights, petitioners had standing to prosecute the motion. Citing their prior unsuccessful effort to have Brea substituted in as the real party in interest, Smith argued "there is no party before this [c]ourt with standing to urge th[e set-aside m]otion" and it "should therefore be denied on the grounds that the [c]ourt has no jurisdiction to hear [it]." The probate court rejected Smith's argument, ruling petitioners had standing to make the set-aside motion.

Smith relies on the decision in *Heppler v. J.M. Peters Co., supra,* 73 Cal.App.4th 1265 to support its attempt to recover attorney fees from Brea. That case is distinguishable. There homeowners and a homeowners association sued Peters, the real estate developer who built their homes. Peters cross-complained against several subcontractors who performed worked on the development. Peters settled with the homeowners, assigning to them its contractual indemnity rights against the subcontractors. The homeowners proceeded to trial against subcontractors. The court entered judgment in favor of three subcontractors and awarded these subcontractors their attorney fees against the homeowners. In affirming the prevailing subcontractors' fee award, the Court of Appeal ruled "[b]y virtue of the assignment, plaintiffs became owners of Peters's indemnity rights and were completely in charge of the litigation." (*Id.* at p. 1290.)

Unlike *Heppler*, the probate court expressly found Brea "did not sue [Smith] as assignee . . . ." (Underscoring omitted.) Given Smith's successful opposition to Brea's effort to substitute into the probate action in place of petitioners, plus Smith's failure in its effort to attack petitioners' standing to prosecute the set-aside motion, we conclude the probate court properly denied Smith's request for attorney fees against Brea.

DISPOSITION

The orders denying the motion to set aside or rescind the settlement agreement and assignment of interests and concerning attorney fees are affirmed. The parties shall bear their own respective costs on appeal.

RYLAARSDAM, J.

WE CONCUR:

O'LEARY, P. J.

FYBEL, J.